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18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

20 ADRIANA FERNANDEZ,

21 Plaintiff,

22 v.

23 JAMES RAY MORRIS, HAROLD
24 CARTER, RAYMOND LOERA, COUNTY
25 OF IMPERIAL, IMPERIAL COUNTY
26 SHERIFF'S DEPARTMENT, and DOES 1-
27 100, inclusive.

28 Defendants.

Case No. '08 CV 06013LS JMA

**COMPLAINT FOR DAMAGES FOR
PERSONAL INJURIES AND
VIOLATION OF CIVIL RIGHTS**

(JURY TRIAL REQUESTED)

Adriana Fernandez, ("Plaintiff"), by and through her attorneys, David J. Zugman, Gary P. Burcham,
Terry Singleton, and Gerald Singleton, hereby states and alleges as follows:

INTRODUCTORY STATEMENT

1. Title 42 U.S.C. Section 1983 provides a civil remedy for the violation of a person's constitutional or statutory rights by any person who is acting under the color of state law. In the instant matter, Plaintiff was sexually abused by Imperial County Deputy Sheriff Defendant James Morris at the Imperial County Jail while Defendant Morris was engaged in the performance of his official duties as an Imperial County Jail Correctional Officer. Plaintiff was coerced into sexual contact with Defendant Morris

1 based upon Defendant Morris' promises and threats to use his official position to either help or hurt
2 Plaintiff. The sexual abuse of an inmate violates rights accorded to her under the Constitution and laws
3 of the United States. The Imperial County Sheriff's Office, and the County of Imperial, share culpability
4 in this invasion of Plaintiff's rights as Defendant Morris' predatory behavior was either willfully ignored
5 or implicitly condoned by supervisors. The circumstances were such that the failure of Imperial County
6 and the Imperial County Sheriff's Department to address this rampant problem at the Imperial County Jail
7 that *Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978), liability is appropriate.

8 2. On March 19, 2007, Plaintiff was charged in federal court with importing marijuana into the
9 United States. Though a federal inmate, because Plaintiff was arrested in Imperial County, she was sent
10 to the Imperial County Jail (which contracts with the United States Marshal's Service to detain federal
11 inmates in El Centro, California, prior to the time when they are brought before a District Court Judge in
12 San Diego, California). Defendant Morris was employed as a deputy sheriff who was assigned by the
13 Imperial County Sheriff's Department ("ICSD") to work as a guard at the Imperial County Jail. During
14 Plaintiff's incarceration, Defendant Morris repeatedly pressured Plaintiff to have a sexual relationship with
15 him. Defendant Morris used his position as a guard to pressure Plaintiff into having sexual relations with
16 him. Defendant Morris's actions were outrageous abuses of the powers invested to him by the County of
17 Imperial ("the County") and the Imperial County Sheriff's Department.

18 3. The incidents in which Defendant coerced Plaintiff into having sexual relations with him
19 were not isolated. Defendant Morris also had sexual relations with at least two other females who were
20 incarcerated at Imperial County Jail. In addition, Defendant Morris' actions in taking advantage of female
21 inmates were aided and abetted and/or willfully ignored by other ICSD and County employees who knew
22 about this predatory behavior. Morris' sexual acts with inmates occurred primarily, but not exclusively,
23 in a room with boarded-up windows located adjacent to the recreation yard where there was no security
24 camera, and a mattress on the floor.

25 4. Defendant Morris, and DOE Defendants, acted separately and together to deprive Plaintiff
26 of rights guaranteed to her by the laws of this country and state. The ICSD and the County are liable in this
27 matter as the lack of supervision, training, and response to this problem constituted a *de facto* "policy" in
28 support of Defendant Morris' behavior and necessitates a finding of *Monell* liability.

JURISDICTION

5. This Court has jurisdiction to hear this case pursuant to Title 42 U.S.C. § 1983, Title 28 U.S.C. §§ 1331 and 1343, and Article III of the United States Constitution. With respect to the claims stated herein based upon state law, this Court has supplemental jurisdiction. *See* Title 28 U.S.C. § 1367(a); *Allen v. City of Los Angeles*, 92 F.3d 842, 945 (9th Cir. 1996). The Southern District of California is the proper venue because the acts and omissions alleged herein occurred in the County of Imperial, State of California, which is located within the Southern District of California.

THE PARTIES

6. Plaintiff Adriana Fernandez is a United States citizen who, at all times mentioned herein, resided in the County of Imperial, State of California.

7. Defendant County of Imperial ("County") is a duly organized municipal corporation located in the State of California. Defendant Imperial County Sheriff's Department ("ICSD") is the legally organized Sheriff's Department for the County. The County, and the Imperial County Jail, are located within the Southern District of California.

8. Defendant Harold Carter was, at certain times before and during the times set forth herein, the duly elected Sheriff of the County. As such, he was the commanding officer of the ICSD and was responsible for the training, suspension, hiring, and conduct of Defendants as more fully set forth herein. He is sued both individually and in his official capacity.

9. Defendant Ray Loera is, and was at certain times, during the times set forth herein, the Sheriff of the County after Harold Carter left the position. As such, he was the commanding officer of the ICSD and was responsible for the training, suspension, hiring, and conduct of Defendants as more fully set forth herein. He is sued both individually and in his official capacity.

10. Defendant James Morris is, and at all times herein mentioned was, a law enforcement officer employed by ICSD and the County. In the course of his duties and acting under color of law, he inflicted the torts and violations of civil rights alleged herein. He is responsible by law for enforcing the regulations of the ICSD and upholding the laws of the State of California and the United States.

11. The unknown individuals who committed the acts alleged herein are sued as DOES. Plaintiff will seek leave to amend the Complaint to allege the true identities of these individuals when their identities

1 are discovered. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 defendant DOES 1 through 100, inclusive, are unknown to Plaintiff who therefore sues said Defendants
3 by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants
4 designated herein as "DOE" intentionally, negligently or in some other manner participated in the events
5 and happenings herein referred to and negligently or in some other manner caused injuries proximately and
6 directly to Plaintiff as herein alleged.

7 12. At all times mentioned herein, each of the Defendants, including those designated by
8 fictitious names, where the agents and employees of the remaining Defendants, conspired with them, and,
9 in acting in the manner stated herein, were acting within the course and scope of such agency and/or
10 employment, and also were acting in concert with one another.

11 **FACTUAL ALLEGATIONS**

12 13. In 2007, Defendant Morris was employed by the County and the ICSD and assigned to the
13 Imperial County Jail as a Correctional Officer and/or guard. As part of his job, he had direct contact with
14 female inmates.

15 14. In or about April 2007, Plaintiff, Adriana Fernandez, was being held at the Imperial County
16 Jail as a pre-trial detainee in federal court. Defendant Morris was one of the Correctional Officers with
17 whom Plaintiff came into contact with during her stay at the Imperial County Jail. Soon after her arrival,
18 Defendant Morris made small talk with Plaintiff, saying that he had recognized her from a previous term
19 at the Imperial County Jail. The small talk from Defendant Morris progressed from flirtation to repeated
20 and persistent requests that Plaintiff engage in sexual relations with him. Defendant Morris made it clear
21 to Plaintiff that her acquiescing to his sexual desires would benefit her during her time in custody, while
22 failing to do so would result in harsher treatment. After engaging in sexual contact with Defendant Morris,
23 Plaintiff immediately noticed that something had changed, but it was not a good change. 24-48 hours after
24 sexual contact with Defendant Morris, Plaintiff started suffering the first symptoms of a venereal disease
25 she had contracted from Defendant Morris: syphilis. (There is no doubt that Plaintiff did not have syphilis
26 at the time she was admitted to the Imperial County Jail as she tested negative for it at that time.)

27 15. Around the time that Plaintiff first had sexual contact with Defendant Morris, she was placed
28 in solitary confinement. The Correctional Officer in charge of taking Plaintiff to recreation – her only time

1 out of solitary confinement – was Defendant Morris. Defendant Morris again propositioned Plaintiff for
2 sex, at which time Plaintiff informed Defendant Morris that she was symptomatic (she was already
3 developing syphilitic sores.) The health of Plaintiff did not cause Defendant Morris's sexual interest to
4 wane. The reason for this is that Defendant Morris already had syphilis, and it was he that had given it to
5 Plaintiff. Prior to their initial sexual contact, Defendant Morris never informed Plaintiff that he had syphilis
6 (or any other sexually transmitted disease). Had Plaintiff known Defendant Morris had syphilis, she would
7 never have engaged in any sexual activity with him.

8 16. Defendant Morris continued to try to persuade, cajole, bribe, intimate, and pressure Plaintiff
9 into having sexual relations with him. Because Defendant Morris had control of Plaintiff's time in the
10 recreation yard, he could and did cut her time short if she did not consent to sex with him. Through his
11 tactics and intimidation, Defendant Morris coerced Plaintiff into having sexual relations with him on
12 several more occasions.

13 17. Defendant Morris was arrested and prosecuted by the Imperial County District Attorney's
14 Office for his sexual conduct with Plaintiff. On September 13, 2007, Deputy Morris pled guilty to one
15 felony count (violation of Cal. Penal Code Section 289.6(a)(2)) for the conduct outlined above. A total of
16 3 victims were named in the criminal complaint and sentencing forms issued by the Imperial County
17 Superior Court.

18 18. Plaintiff is informed and believes that Defendant Morris' sexual relationships with Plaintiff
19 and other inmates were well known to other inmates and to other ICSD deputy sheriffs, including
20 supervisory employees of the ICSD and the County who worked at Imperial County Jail. (Indeed, Plaintiff
21 is informed and believes that there were other ICSD and County employees who also sexually abused
22 female inmates during this time period.) The actions of Defendant Morris (and possibly other ICSD and
23 County employees) could not have occurred but for the help, assistance, and/or acquiescence of other ICSD
24 deputy sheriffs and/or County employees who had a duty to protect the female inmates from this predatory
25 behavior, but did nothing to stop it. The conduct of these individuals, as well as those charged currently
26 as DOES, shows a corruption so pervasive that other ICSD and/or County employees must have assisted
27 this conspiracy and/or failed to discharge their sworn duty to protect the rights of these vulnerable female
28 inmates.

1 19. During all the acts set forth herein, Defendants, and each of them, were acting under the color
2 of their authority as Deputy Sheriffs and/or law enforcement officers or agents of the County.

3 20. As a proximate result of the conduct of Defendants, and each of them, Plaintiff was hurt and
4 injured in her strength, health and activity, sustaining injuries to her body and shock and injury to her
5 nervous systems and person, all of which said injuries have caused, and will continue to cause, Plaintiff
6 great mental, emotional, physical and nervous pain and suffering. Plaintiff is informed and believes and
7 thereon allege that said injuries will result in permanent disabilities to Plaintiff.

8 21. As a further and proximate result of the conduct of said defendants, and each of them,
9 Plaintiff will incur medical and incidental expenses in the future, including, but not limited to, the need to
10 treat further outbreaks of the syphilis infection .

11 22. On or about June 27, 2007, Plaintiff was interviewed without counsel present (and despite
12 her stated desire to have counsel present) about the above-listed events by Sheriff Loera and Raquel
13 Escalante at the Geo Detention Facility in downtown San Diego. Plaintiff was in custody and was
14 interrogated by Loera and Escalante regarding Morris. Plaintiff did not feel free to either terminate the
15 encounter, to refuse to answer questions, or to otherwise end the questioning. Plaintiff answered questions
16 in a small room for approximately 1 hour.

17 23. Plaintiff previously has presented claims to both the County of Imperial and the ICSD based
18 on the aforementioned misconduct. The ICSD denied the claim, stating that Defendant Morris' conduct
19 was handled administratively and that it has no ability to award damages. Plaintiff has not received any
20 response from her claim filed with the County of Imperial. Accordingly, said claim is denied by operation
21 of law. Finally, Plaintiff filed an administrative claim with the Imperial County Jail during her time in
22 custody in order to exhaust any administrative remedies that might be available from the jail. Her
23 exhaustion of these remedies resulted in no relief being granted to her.

24 **FIRST CAUSE OF ACTION**

25 **(Deprivation of Rights Under Color of State Law - 42 U.S.C. § 1983 - As to All Defendants)**

26 24. Plaintiff reasserts and re-alleges Paragraphs 1 through 23 of this Complaint as though the
27 same were set forth herein in full.

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1 25. Plaintiff alleges that Defendants Morris, Carter, Loera, and DOES 1 through 100, employees
2 of the County of Imperial, acting in the course and scope of their employment with Imperial County through
3 its Sheriff's Office, and acting under the color of authority, violated the protections and rights guaranteed
4 to Plaintiff by laws, treaties, and the Constitutions of the State of California and of the United States of
5 America (including, but not limited to, the Fourth and Fourteenth Amendments).

6 26. Defendants Morris, Carter, Loera, and DOES 1 through 100, as of yet unknown officers
7 and/or agents of the County and/or the ICSD individually, and through their conspiracy with one another,
8 and pursuant to the official policy of Defendant ICSD, deprived Plaintiff of her federally protected
9 constitutional rights while acting under color of their authority as law enforcement personnel. Defendants
10 County and ICSD are liable because this incident resulted from official policy and/or a longstanding
11 practice or custom of the police departments of these defendants.

12 27. Defendants Carter, Loera, the County, and ICSD, are liable because a policy or custom made,
13 implemented or ratified by these defendants played a part in the violation of federal law by Defendants
14 Morris, and DOES 1-100, which caused Plaintiff's injuries. In addition, each of these governmental entities
15 is liable for the violations of constitutional rights committed by their agents, officers, and employees against
16 Plaintiff because these constitutional violations were ratified by a policy-making level employee. Thus,
17 Plaintiff contends that a policy-making level employee for each governmental entity defendant made, or
18 ratified, a decision that deprived Plaintiff of her constitutional rights.

19 28. Defendants Carter, Loera, County of Imperial, and ICSD, are also liable through their
20 (separate and joint) omissions and/or deliberate and willful indifference for the constitutional and statutory
21 violations committed by its employees independent of ratification. Even if the policy and custom was not
22 ratified by Defendants Carter, Loera, County of Imperial, and ICSD, and regardless of whether their policies
23 were facially constitutional, whether Defendants did not direct the employee to take the unconstitutional
24 action, and whether the municipality did not have the state of mind required to prove the underlying
25 violation, the deliberate indifference of the County, Carter, Loera and ICSD led it to its omissions which
26 allowed Defendant Morris and DOE defendants to engage in the systemic violation of Plaintiff's
27 constitutional and statutory rights. Further, Defendants County, Carter, Loera, and ICSD were on actual
28 or constructive notice that their omission(s) would likely result in a constitutional violation.

1 29. Defendants Morris, Carter, Loera, and DOES 1 through 100 conspired and arranged for
2 Defendants' illegal treatment of Plaintiff not to be reported to proper authorities and for Defendants,
3 including Defendant Morris, not to suffer any adverse consequences in their employment as a result of their
4 illegal conduct toward Plaintiff.

5 30. In doing the acts described herein above, Defendants Morris, Carter, Loera, and DOES 1
6 through 100, were acting as the agents, servants, workmen, employees, and/or co-conspirators of all other
7 defendants, and each of them. Plaintiff is informed and believes and thereon alleges that at all times herein
8 mentioned each of the Defendants was the agent and employee of each of the remaining defendants, and
9 in doing the things in here alleged, was acting within the scope of such agency. Defendant Morris, and any
10 other DOE Defendant who acted as a supervisor during this the time the above-listed acts occurred, is liable
11 both for his/her individual acts and for any other unconstitutional acts committed by others which the
12 supervisory Defendant set in motion. Finally, Defendant Sheriffs Carter and Loera (and DOE supervisory
13 ICSD employees sued herein as DOES 1-100) are liable because they ratified and/or condoned the
14 unconstitutional and illegal conduct of Defendants Morris and DOES 1-100 and/or acted with willful and
15 deliberate indifference toward the rights and safety of Plaintiff. Because Defendants Sheriff Carter and
16 Loera and the supervisory DOE Defendants are sued in their official capacities (in addition to their
17 individual capacities), the County is liable for their illegal conduct.

18 31. In committing the acts and omissions alleged and described herein above, Defendants were
19 acting under the color of the laws of the State of California and the County of Imperial, to deprive Plaintiff
20 of federally protected rights under the Fourth and Amendment. Each of the Defendants named herein acted
21 under color of authority of the State of California and the County of Imperial.

22 32. At no time did Plaintiff give valid, lawful consent to the unlawful acts of Defendants, nor did
23 Plaintiff ever give consent to any of the other unlawful and tortious actions committed by Defendants as
24 alleged herein.

25 33. As a direct and proximate result of the above-described unlawful and malicious acts of
26 Defendants, all committed under color of their authority and while acting in that capacity, Plaintiff suffered
27 grievous bodily harm and extreme pain, and mental suffering, all of which is in violation of her rights under
28 the laws and constitution of the United States.

34. By reason of the Defendants' conduct, Plaintiff was deprived of rights, privileges, and immunities secured to her by the Constitution and laws of the United States (and particularly, the Fourth Amendment), in that the searches and seizures, assault and battery, false arrest and false imprisonment amounted to an arbitrary, unlawful intrusion by defendants into the security of Plaintiff's privacy, person, body, and bodily integrity, were not authorized by law. Additionally, Plaintiff's rights were violated in that the contacts on Plaintiff's person, restrictions of her movements, and damage to her person deprived Plaintiff of liberty and property interests without due process of law.

35. In doing the things herein alleged, Defendants, and each of them, acted willfully. The acts of each of the Defendants were in violation of the laws of the United States of America and the State of California and constitute malice, oppression, and fraud, in that the Defendants intended to cause injury to Plaintiff, thus entitling Plaintiff to punitive damages against all Defendants.

36. By this action, Plaintiff seeks all legal and equitable relief to which she may be entitled, including, but not limited to, compensatory and punitive damages, attorneys fees and costs, and prejudgment interest.

SECOND CAUSE OF ACTION

(Battery - As to all Defendants)

37. Plaintiff reasserts and re-alleges Paragraphs 1 through 36 of this Complaint as though the same were set forth herein in full.

38. In committing the acts and omissions as described herein above, Defendants Morris, and DOES 1 through 100, acted with the intent to physically make contact with (*i.e.*, "touch") Plaintiff.

39. At no time did Plaintiff give valid, lawful consent to any of the intentional, unlawful, harmful and offensive acts of the Defendants. Moreover, at no time did Defendant Morris inform Plaintiff that he had syphilis prior to having sexual contact with Plaintiff. At no time did Plaintiff give lawful consent to any touching by any Defendants, including Defendant Morris, and Defendants were not privileged to touch Plaintiff in the manner herein alleged above. The unlawful touching of Plaintiff by Defendants resulted in physical injury to Plaintiff. Defendants Carter, Loera, and the DOE Defendants are liable because they aided and abetted, ratified or condoned and/or conspired with Defendant Morris, and/or acted with deliberate indifference toward the violation of Plaintiff's rights by Defendant Morris. The County is liable

1 because the acts of its employees were done during the course and scope of their employment with the
2 County. See California Government Code § 815.2(a) and 820(a), *inter alia*.

3 40. The aforementioned acts and omissions of the Defendants Morris, Carter, Loera and DOES
4 1 through 100, were willful, oppressive and undertaken with a conscious and reckless indifference to, and
5 disregard of, Plaintiff's rights and safety. Accordingly, Plaintiff is entitled to exemplary and punitive
6 damages in a sum sufficient to punish and make an example of Defendants Morris, Carter, Loera, and
7 DOES 1-100.

8 41. Defendant County is liable under California Government Code § 815.2(a), *inter alia*, because
9 the acts and omissions of Defendants Morris, and DOES 1-100, were performed while Defendants were
10 acting within the course and scope of their employment with the County and the ICSD.

11 **THIRD CAUSE OF ACTION**

12 **(False Imprisonment - As to All Defendants)**

13 42. Plaintiff reasserts and re-alleges Paragraphs 1 through 41 of this Complaint as though the
14 same were set forth herein in full.

15 43. Immediately prior to the acts of Defendants Morris, and DOES 1-100, Plaintiff had been
16 incarcerated in Imperial County Jail and was held in the general population of the institution. Because of
17 the aforementioned incidents with Defendant Morris, Plaintiff's time in segregation was extended as part
18 of Correctional Officer Morris' attempt to coerce additional sexual conduct out of Plaintiff and/or punish
19 her for denials of his sexual advances. Defendant Morris is liable for his action pursuant to California
20 Government Code § 820(a), *inter alia*. Defendants Carter, Loera, and the DOE Defendants are liable
21 because they aided and abetted, ratified or condoned and/or conspired with Defendant Morris, and/or acted
22 with deliberate indifference toward the violation of Plaintiff's rights by Defendant Morris. Defendants
23 County of Imperial and the ICSD are liable under California Government Code § 815.2(a), *inter alia*,
24 because the acts and omissions of Defendants Carter, Loera, Morris, and DOES 1-100, were performed
25 while Defendants were acting within the course and scope of their employment with the County of Imperial
26 and the ICSD.

27 44. In falsely imprisoning Plaintiff, Defendants Morris, and DOES 1-100, acted with deliberate
28 malice and oppression. The aforementioned acts and omissions of Defendants Morris, and DOES 1-100,

1 were willful, oppressive and performed with a conscious and reckless indifference to, and disregard of,
2 Plaintiff's rights and safety, by reason of which Plaintiff is entitled to exemplary and punitive damages in
3 a sum sufficient to punish and make an example of Defendants Morris, Carter, Loera, and DOES 1-100.

4 **FOURTH CAUSE OF ACTION**

5 **(Negligent Hiring, Retention, Supervision, Training, and Control - As to Defendants Carter,**
6 **Loera, County, ICSD and DOES 1-100)**

7 45. Plaintiff reassert and re-allege Paragraphs 1 through 48 of this Complaint as though the
8 same were set forth herein in full.

9 46. At all times set forth herein, Defendants County of Imperial, Carter, Loera, the ICSD, and
10 DOES-1-100, were responsible for the training, suspension, hiring, retention and conduct of Defendant
11 Morris and DOES 1-100. Defendants County of Imperial, the Imperial Couty Sheriff's Department, and
12 DOES 1-100, among others, its agents and employees, negligently hired, trained, retained, supervised,
13 managed, directed and controlled the activities of Defendant Morris and DOES 1-100. This negligence
14 includes, but is not limited to, inadequately training and supervising Defendants Morris, and DOES 1-100,
15 failing to appropriately discipline and control Defendants Morris, and DOES 1-100, and hiring and
16 retaining Defendants Morris, and DOES 1-100 despite knowing (through actual and/or constructive notice)
17 that Defendants Morris, and DOES 1-100 were unfit and unsuitable to act as employees.

18 47. Defendants County of Imperial and the ICSD, as the entities which negligently hired,
19 retained, controlled and supervised Defendants, are liable for their acts and omissions in this regard.
20 Defendant Morris, and any other DOE defendant who acted in a supervisory capacity with respect to DOES
21 1-100, is liable for their negligent acts and omissions in this capacity. Any DOE defendant responsible for
22 decisions regarding the hiring, retention, control, or training of Defendants Morris, and DOES 1-100, is
23 liable for their acts and omissions in this regard. The individual defendants are liable for their actions
24 pursuant to California Government Code § 820(a), *inter alia*. Defendants County of Imperial and the ICSD
25 are liable under California Government Code § 815.2(a), *inter alia*, because the acts and omissions of
26 Defendants Morris, and DOES 1-100 were performed while defendants were acting within the course and
27 scope of their employment with the County of Imperial and the ICSD.

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48. The negligence of Defendants County of Imperial, the ICSD, and DOES 1-100, was a direct and proximate cause of the injuries to Plaintiff in that Defendants Morris, and DOES 1-100, while in the course and scope of their employment with the ICSD and the Imperial County Jail, committed the acts set forth above in violation of the laws of the United States of America, the state of California, and Plaintiff's civil rights.

FIFTH CAUSE OF ACTION

(Negligence - As to all Defendants)

49. Plaintiff reasserts and re-alleges Paragraphs 1 through 48 of this Complaint as though the same were here more fully set forth at length.

50. At all times set forth herein, Defendants County of Imperial, Carter, Loera, the ICSD, and DOES 1-100, were engaged in the training, supervision and setting departmental policy for their police officers. In so doing, Defendants owed a duty of reasonable care to all members of the public to protect them from suffering tortious harm at the hands of their employees. Defendants Morris, and DOES 1-100, and each of them, breached their duty of reasonable care by, among other things, violating Plaintiff's civil rights, battering Plaintiff, falsely imprisoning Plaintiff, and intentionally inflicting emotional distress upon Plaintiff.

51. The individual Defendants are liable for their actions pursuant to California Government Code § 820(a), *inter alia*. Defendants County and the ICSD are liable under California Government Code § 815.2(a), *inter alia*, because the acts and omissions of Defendants Morris and DOES 1-100 were performed while defendants were acting within the course and scope of their employment with the County and the ICSD.

SIXTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress - As to all Defendants)

52. Plaintiff reasserts and re-alleges Paragraphs 1 through 51 of this Complaint as though set forth herein in full.

53. On the date and time set forth above, Defendants Morris, and DOES 1-100, while in the course and scope of their employment with the County of Imperial and the ICSD, intentionally violated Plaintiff's civil rights, battered Plaintiff, and falsely imprisoned Plaintiff.

1 54. Plaintiff alleges that the conduct of Defendants, and each of them, was intentional,
2 outrageous, unprivileged, and malicious and was committed for the purpose of causing Plaintiff to suffer,
3 or with the knowledge that Plaintiff was certain to suffer, humiliation, mental anguish and emotional and
4 physical distress. Defendants Morris, and DOES 1-100, are liable by virtue of the fact that they committed
5 the initial assaults against Plaintiff. This includes, but is not limited to, the fact that Defendant Morris
6 knowingly gave Plaintiff syphilis without informing her that he was infected with the disease. The conduct
7 of Defendants County of Imperial, the ICSD, and DOES 1-100. In confirming and ratifying this conduct
8 of Defendants was done with the knowledge that Plaintiff's physical and emotional distress would thereby
9 increase, and was done with a wanton and reckless disregard for the consequences to Plaintiff. Defendants
10 Carter, Loera, County of Imperial, and the ICSD's gross indifference to the suffering of Plaintiff (and other
11 victims of Mr. Morris) coupled with the fact that said Defendants were on actual or constructive notice of
12 the problem is sufficient to establish their liability for Defendant Morris and DOES 1-100 actions.

13 55. As a further proximate result of Defendants' acts as herein alleged, Plaintiff suffered severe
14 humiliation, mental anguish and emotional and physical distress, and has been injured in mind and body,
15 including but not limited to the continuing physical effects from contracting syphilis from Defendant
16 Morris, all to Plaintiff's damage. The individual Defendants are liable for their actions pursuant to
17 California Government Code § 820(a), *inter alia*. Defendants County of Imperial and the ICSD are liable
18 under California Government Code § 815.2(a), *inter alia*, because the acts and omissions of Defendants
19 Morris, and DOES 1-100, were performed while defendants were acting within the course and scope of
20 their employment with the County of Imperial and the ICSD.

21 56. In doing the things herein alleged, Defendants, and each of them, acted willfully. The acts
22 of each of the Defendants were in violation of the laws of the United States of America and the State of
23 California and constitute malice, oppression, and fraud, in that the Defendants intended to cause injury to
24 Plaintiff, thus entitling Plaintiff to punitive damages from Defendants Morris, Carter, Loera, and DOES
25 1-100.

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SEVENTH CAUSE OF ACTION

(Violations of Cal. Civ. Code Sections 52.1 and 52.3 - As to All Defendants)

57. Plaintiff incorporates by reference paragraphs 1 through 56 of this Complaint as though set forth herein in full.

58. The conduct of Defendants Morris, and DOES 1-100, interfered with, violated and attempted to interfere with, by intimidation and force, Plaintiff's inalienable rights guaranteed by Article I, Sec. 1, of the California Constitution among which "are enjoying and defending life and liberty . . . and pursuing and obtaining safety, happiness, and privacy." Said conduct further interfered with Plaintiff's right of protection from bodily harm guaranteed by section 43 of the California Civil Code. Finally, said conduct violated Plaintiff's rights as guaranteed by California Civil Code §§ 52.1 and 52.3.

59. As a further proximate result of Defendants' acts as herein alleged, Plaintiff suffered severe humiliation, mental anguish and emotional and physical distress, and has been injured in mind and body, including but not limited to the continuing physical effects from contracting syphilis from Defendant Morris, all to Plaintiff's damage. The individual Defendants are liable for their actions pursuant to California Government Code § 820(a), *inter alia*. Defendants County of Imperial and the ICSD are liable under California Government Code § 815.2(a), *inter alia*, because the acts and omissions of Defendants Morris, and DOES 1-100, were performed while defendants were acting within the course and scope of their employment with the County of Imperial and the ICSD.

EIGHTH CAUSE OF ACTION

(Violation of California Civil Code sec. 51-51.3, "Unruh Civil Rights Act" - As to All Defendants)

60. Plaintiff incorporates by reference paragraphs 1 through 59 of this Complaint as though set forth herein in full.

61. The Unruh Civil Rights Act, California Civil Code sections 51 through 51.3, provides protection from discrimination by all business establishments in California, including housing and public accommodations. California Civil Code section 51(b) describes the protections found under the Unruh Civil Rights Act: All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full

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1 and equal accommodations, advantages facilities, privileges, or services in all business establishments of
 2 every kind whatsoever. *See* Civil Code § 51(b).

3 62. Defendants Morris and DOES 1-100 deprived Plaintiff of her right to accomodation free of
 4 discrimination because of the actions of Defendant Morris and other DOE Defendants.

5 63. As a further proximate result of Defendants' acts as herein alleged, Plaintiff suffered severe
 6 humiliation, mental anguish and emotional and physical distress, and has been injured in mind and body,
 7 including but not limited to the continuing physical effects from contracting syphilis from Defendant
 8 Morris, all to Plaintiff's damage. The individual Defendants are liable for their actions pursuant to
 9 California Government Code § 820(a), *inter alia*. Defendants County of Imperial and the ICSD are liable
 10 under California Government Code § 815.2(a), *inter alia*, because the acts and omissions of Defendants
 11 Morris, and DOES 1-100, were performed while defendants were acting within the course and scope of
 12 their employment with the County of Imperial and the ICSD.

13 **ATTORNEY'S FEES BASED ON CAL. CIVIL CODE § 1021.4**

14 **(Defendant Morris convicted of Felony - Cal. Code of Civ. Pro. § 1021.4)**

15 64. California authorizes the award of attorney's fees in an action against a defendant convicted
 16 of a felony in an action for damages incurred in the commission of that felony. Because Defendant Morris
 17 was convicted of a felony in Imperial County (case: JCF20312) for the conduct alleged herein, Plaintiff
 18 requests that attorney's fees pursuant to Cal. Civil Code § 1021.4 be awarded.

19 **JURY DEMAND**

20 Plaintiff hereby respectfully makes a demand for a jury trial.

21 **PRAYER FOR JUDGMENT AND DAMAGES**

22 WHEREFORE, Plaintiff prays for judgement against Defendants, and each of them, as follows:

- 23 (1) for general damages in an amount according to proof at the time of trial;
- 24 (2) for specific damages in an amount according to proof at the time of trial;
- 25 (3) for punitive damages (against Defendants Morris, Carter, and Loera and DOES 1-100);
- 26 (4) for attorney fees and costs pursuant to Title 42 U.S.C. §§ 1983, 1985, Cal. Civil Code §§
 27 52.1, *et seq.*, Cal. Civil Code § 1021.4, and any and all other federal, state or local statutory,
 28 case law or equitable powers of this Court that may apply;

1 (5) for an order granting such other and further relief, including pre-judgment interest, as the
2 Court may deem equitable and just.
3

4 Respectfully submitted this 2nd day of April, 2008,

5 By: 
6

7 DAVID J. ZUGMAN

8 GERALD SINGLETON

9 Attorneys for Plaintiff Adriana Fernandez
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ADRIANA FERNANDEZ

(b) County of Residence of First Listed Plaintiff IMPERIAL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DAVID J. ZUGMAN, ESQ; BURCHAM & ZUGMAN, APC, 964
FIFTH AVE. #300 SAN DIEGO CA 92101 (619) 699-5930

DEFENDANTS

JAMES RAY MORRIS, HAROLD CARTER,
RAYMOND LOERAT, COUNTY OF IMPERIAL,
IMPERIAL COUNTY SHERIFFS DEPT, DOES
County of Residence of First Listed Defendant IMPERIAL

AMU PLAINTIFF CASES ONLY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorney's (Firm Name, Address, and Telephone Number)

00 CV 0601 JLS JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| | | | | |
|---|--|---|--|---|
| CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. section 1983

Brief description of cause:

INJURIES CAUSED BY ACTIONS OF IMPERIAL COUNTY JAIL CORRECTIONAL OFFICER

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

149294

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

see 4/2/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149294 - SH

April 02, 2008
11:19:09

Civ Fil Non-Pris

USAO #: 08CV0601

Judge.: JANIS L. SAMMARTINO

Amount.:

Check#: BC1584

\$350.00 CK

Total-> \$350.00

FROM: FERNANDEZ V. MORRIS ET AL